

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
AMENDED INITIAL STATEMENT OF REASONS FOR REGULATORY ACTION
(Pre-publication of Notice Statement)

Add Sections 52.00, 52.01, 52.02, 52.03, 52.04,
52.05, and 52.09, and Amend Sections 150.01, 150.16, and 150.17,
Title 14, California Code of Regulations (CCR).

Re: Nearshore Fishery Management Plan
Implementing Regulations, and
Commercial Take of Nearshore Fishes,
Commercial Nearshore Fishing Gear.

- I. Date of Initial Statement of Reasons: March 2, 2002
- II. Date of Amended Initial Statement of Reasons: June 28, 2002
- III. Dates and Locations of Scheduled Hearings:
 - (a) Notice Hearing: Date: May 9, 2002
Location: Fresno, CA.
 - (b) Discussion Hearing: Date: June 20, 2002
Location: South Lake Tahoe, CA.
 - (c) Discussion Hearing Date: August 2, 2002
Location: San Luis Obispo, CA
 - (d) Discussion Hearing: Date: August 30, 2002
Location: Oakland, CA.
 - (e) Adoption Hearing Date: October 24, 2002
Location: Crescent City, CA.
- IV. Description of Regulatory Action:
 - (a) Statement of Specific Purpose of Regulation Change and Factual Basis
for Determining that Regulation Change is Reasonably Necessary:

Regulations are proposed to implement a Nearshore Fishery Management Plan (Nearshore FMP or plan) and to amend nearshore fishery management regulations adopted last year. Legislation directs the Department of Fish and Game (Department) to develop, and the Fish and Game Commission (Commission) to adopt, the Nearshore FMP in compliance with the Marine Life

Management Act (MLMA) (Chap. 1052, Stats. 1998) and follow up legislation (Chap. 1053, Stats. 1998 and Chap. 483, Stats 1999). The MLMA directs that a Nearshore FMP be approved by the Commission on or before January 1, 2002 and that regulations to implement the Nearshore FMP be adopted by the Commission not more than 60 days following adoption of the plan or a plan amendment (Fish and Game Code Section 7078). The Commission extended the adoption date for the Nearshore FMP due to the need to make extensive revisions to the plan during the first half of 2002.

As background, the MLMA includes guidelines for the development and adoption of fishery management plans and a description of the content of fishery management plans (Fish and Game Code Sections 7075-7088 et seq). The Nearshore FMP is the second fishery management plan prepared and adopted by the Commission pursuant to the MLMA. The first FMP is the White Seabass FMP which, in addition to White Seabass FMP implementing regulations, contains four general FMP implementing regulations (Sections 50.00, 50.01, 50.02, and 50.03, Title 14, CCR) generally applicable to all FMPs adopted pursuant to the MLMA.

Prior to 1998, most nearshore fish stocks were traditionally harvested by recreational anglers and divers in shallow waters less than 100 feet in depth under sport fishing regulations. However, during the last 10-15 years, nearshore fish stocks have also become the target of a rapidly growing and expanding commercial live-fish fishery off California and Oregon that primarily utilizes traps and hook-and-line fishing gear, and is driven by market demand and high ex-vessel prices paid to fishermen for nearshore live and fresh-dead fish (\$0.50-\$7.50 per pound at the dock for fish kept alive in live wells). The rapid growth of the commercial fishery for nearshore fishes has created great concern for the health of these fish stocks and is, in part, responsible for promoting California's enactment of the MLMA that directs preparation of FMPs, including a Nearshore FMP.

The MLMA, as clarified by subsequent language of the Nearshore Fishery Management Act (Chapter 1053, Stats. 1998), initially designated 10 species of nearshore fishes with minimum size limits. Under authority provided by the MLMA, the Commission adopted interim nearshore fisheries regulations last year that resulted in an increase in the number of designated nearshore fishes to include nineteen species [Section 1.90, Title 14, California Code of Regulations (CCR)]. Also, interim regulations adopted last year set harvest guidelines for some nearshore fish stocks, including limits on the days of the week and months of the year that commercial harvesting may take place for California sheephead, cabezon, and greenlings, and fixed the amount (pounds) of these species that may be harvested annually by commercial and recreational fisheries.

Nineteen species of fish are presently designated by the Commission as nearshore fishes. These include 13 species of rockfish (black, black-and-yellow, blue, brown, calico, China, copper, gopher, grass, kelp, olive, quillback, and treefish), California sheephead, cabezon, kelp greenling, rock greenling, California scorpionfish (categorized as a rockfish under federal regulations), and monkeyface eel (also termed monkeyface prickleback).

Sixteen of the nineteen species designated by the Commission as nearshore fishes are also federally designated groundfish (includes about 80 species of fish). Groundfish are managed pursuant to the federal Pacific Coast Groundfish Fishery Management Plan (Groundfish Plan) adopted by the Pacific Fishery Management Council (PFMC or Council) under regulations adopted by the National Marine Fisheries Service, including the 13 species of nearshore rockfishes and California scorpionfish. Cabezon, kelp greenling, and rock greenling, while officially groundfish under the Groundfish Plan, are generally managed under state regulations along with California sheephead and monkeyface eel.

Management of nearshore fishes, both those designated as federal groundfish and as state managed species, has fallen primarily to California because nearshore fish stocks are not actively managed by the Council. This is due primarily to the rapid and recent development of the nearshore fishery and the Council's historic focus on management of the traditional high volume, deeper water fisheries for sablefish, Pacific whiting, lingcod, flatfishes (sole and flounder), and shelf and slope rockfish since the early 1980s. The Council's involvement with management of nearshore fishes is limited primarily to setting an overall annual harvest guideline for nearshore rockfishes, and specifying monthly catch limits for different categories of gear within broad management areas in the groundfish fishery.

Existing Laws and Regulations: Existing laws and regulations governing nearshore fish stocks and fisheries, and the preparation of a fishery management plan for nearshore fishes, include the following.
Fish and Game Code statutes:

1. Provide authority for the Commission to adopt regulations that implement a fishery management plan or plan amendment and make inoperative any fishery management statute that applies to that fishery [Fish and Game Code subsections 7071(b) and 8587.1(b)];
2. Provide authority for the Commission to adopt regulations as it determines necessary, based on the advice and recommendations of the Department, consistent with the process specified in the MLMA [Fish and Game Code subsections 7071(c) and 8587.1(a)];

3. Direct the Commission to adopt a fishery management plan for the nearshore fishery on or before January 1, 2002. [Fish and Game Code subsection 7072(d)];
4. Provide legislative findings and declarations for nearshore fisheries management (Fish and Game Code Section 8585.5);
5. Add several definitions to the Fish and Game Code, including definitions for maximum sustainable yield, optimum yield, overfished, overfishing, nearshore fish stocks, nearshore fisheries, and nearshore waters (Fish and Game Code sections 96.5, 97, 97.5, 98, and 8586);
6. Create a nearshore fishery permit and fee for commercial nearshore fishery (Fish and Game Code Section 8587);
7. Authorize the Commission to regulate commercial nearshore fisheries (Fish and Game Code Sections 7071 and 8587.1);
8. Authorize Commission revocation of a nearshore permit for a violation of nearshore statutes (Fish and Game Code Section 8589.5); and
9. Specify the deposition of funds from the nearshore permit and the source of funding to support preparation of the Nearshore FMP (Fish and Game Code Section 8589).
10. **Specify the number of hooks and lines that may be used in waters within one mile of shore, and make certain exceptions for a single troll line used to take California halibut in Fish and Game Districts 6, 7, and 10, and for lines used to take halibut, white seabass, sharks, skates, and rays south of Point Conception, Santa Barbara County (Fish and Game Code Section 9027.5).**

Existing Title 14 regulations:

1. Define *Nearshore fish stocks, nearshore fisheries, and nearshore waters* (Section 1.90, Title 14, CCR) (Adoption of this regulation in December 2000 included making Fish and Game Code Section 8586 inoperative);
2. Specify a general sport fishing daily bag and possession limit of 10 rockfish in combination of species, including nearshore species (Section 27.60);
3. Describe sport fishing seasons, minimum size limits [California scorpionfish (10 inches), gopher, black-and-yellow, and kelp rockfishes (10 inches), grass and China rockfishes (12 inches), kelp and rock greenlings (12 inches), Cabezon (15 inches), California sheephead (12 inches)], daily bag limits, fillet size limits, and seasonal fishing area restrictions (in the rockfish and lingcod management areas and cowcod conservation areas) (Sections 27.60, 27.65, 28.26, 28.28, 28.29, 28.54, and 28.55);
4. Describe the fishery management areas and cowcod conservation areas where restrictions or special authorizations for sport take of nearshore fishes apply (Section 27.82) (This regulation also serves to conform

- California's regulations with Federal groundfish regulations adopted for the purpose of rebuilding stocks of overfished shelf rockfish);
5. Authorize the transport of sport caught fish, including nearshore fishes, through a closed area (Section 27.67);
 6. Set a limit on recreational anglers of two hooks and one line when rockfish or lingcod are aboard (Section 28.65);
 7. Specify commercial minimum size limits that are the same as sport fishing size limits except for sheephead (commercial minimum size limit is 13 inches, sport fishing size limit is 12 inches) (Section 150.16);
 8. Place a moratorium on the issuance of new nearshore fishery permits and establish a control date of December 31, 1999 for purposes of establishing a restricted access nearshore fishery for the ten originally designated species of nearshore fishes (Section 150, Title 14, CCR);
 9. Specify that a nearshore fishing permit is only required for the commercial take of the 10 species of nearshore fishes originally described in Fish and Game Code Section 8588 (Section 150.01, Title 14, CCR);
 10. Establish a control date of October 20, 2000 for the purpose of developing and implementing a gear endorsement program for the take of the originally designated ten species of nearshore fishes (sections 150.03 and 150.04, Title 14, CCR) (A control date serves to notify fishermen that have not landed these 10 species of fish with a gear type prior to the control date that they are not assured of qualifying for continued use of that gear type in the fishery under future management provisions);
 11. List the closed commercial seasons, days of the week, and areas for cabezon, kelp greenling, rock greenling, lingcod, sheephead, and direct that species with trip limits, size limits, or specified optimum yield shall be sorted prior to weighing, with weight reported separately on the fish receipt (Section 150.16, Title 14, CCR);
 12. Specify a limit of 150 on the number of hooks that may be used on a vessel to take nearshore fish stocks for commercial purposes within one mile of the mainland shore (Section 150.17, Title 14, CCR); and
 13. Extend the sunset date for the nearshore fishery permit, establish a landing requirement for renewing a nearshore fishery permit, and provide an appeal process for applicants denied renewal of a nearshore fishery permit (Amended Section 150, Title 14, CCR).

Existing Federal regulations contained in the Federal Register [Vol. 66, No. 129/ Thursday, July 5, 2001/ Rules and Regulations (Attached)]:

1. Set 2002 trip limits at 200 pounds per month for minor nearshore rockfish taken by limited entry trawl gear;
2. Set 2002 trip limits for limited entry fixed gear for minor nearshore rockfish:

- (A) in the area north of a line near Cape Mendocino, Humboldt County, to the U.S.-Canada border at 10,000 pounds per two-month period during January through April and 7,000 pounds per two-month period during May through December;
 - (B) in the area from Cape Mendocino, Humboldt County, to Point Conception, Santa Barbara County, at 2,000 pounds per two month period during January and February, zero pounds during the months of March and April, 2,000 pounds per two month period during May and June in waters less than 20 fathoms deep, and 2,000 pounds per two month period during July through December;
 - (C) in the area from Point Conception, Santa Barbara County, to the U.S.-Mexico border at 2,000 pounds per two month period during January and February in waters less than 20 fathoms deep, and 2,000 pounds per two month period from March through December;
3. Set 2002 trip limits for open access gear (hook and line) for minor nearshore rockfish:
- (A) in the area north of a line near Cape Mendocino, Humboldt County, to the U.S.-Canada border at 3,000 pounds per two-month period during January through April (not more than 900 pounds of which may be species other than black or blue rockfish), and at 7,000 pounds per two-month period during May through December (not more than 900 pounds of which may be species other than black or blue rockfish);
 - (B) in the area from Cape Mendocino, Humboldt County, to Point Conception, Santa Barbara County, at 1,800 pounds per two month period during January and February, zero pounds during the months of March and April, 1,200 pounds per two month period during May and June in waters less than 20 fathoms deep, and 1,200 pounds per two month period during July through December;
 - (C) in the area from Point Conception, Santa Barbara County, to the U.S.-Mexico border at 1,800 pounds per two month period during January and February in waters less than 20 fathoms deep, 1,800 pounds during the two month period of March and April, and 1,200 pounds per two month period from May through December.

Summary of Proposed Changes to Regulations: Regulation changes are being proposed to implement the Nearshore FMP in conformance with requirements of the MLMA. The Nearshore FMP is considered a “project” under the California Environmental Quality Act (CEQA), and is prepared as an environmental document under CEQA [functional equivalent to an Environmental Impact Report (EIR)], to meet requirements of the MLMA. The Nearshore FMP includes fishery control rules, guidelines and standards that will guide future management of nearshore fish stocks and fisheries, and affect nearshore resource and fisheries for years to come. Generally, proposed regulations will serve to establish and clarify in regulation the purpose, scope, organization, and common terminology

(definitions of terms) of the Nearshore FMP and implementing regulations. Proposed regulations also specify primary fishery control rule options and measures that the Commission will adopt for managing the nearshore fisheries.

Proposed regulations reflect a Department recommended Nearshore FMP “Project” and optional “projects” from which the Commission will select one Nearshore Fishery Management Plan “Project.” Each “project” option represents one or a combination of measures available for managing nearshore fish stocks and fisheries. “Project” alternatives include options that reflects a general continuation of current management, and other options employing a combinations of measures that include fishery control rules, regional management, resource allocation, marine protected areas, fishery restricted access, limits on commercial fishing gear, and prohibition on the take, possession, landing, sale, and purchase of nearshore fish stocks. Regulations implementing marine protected areas and restricted access in the nearshore fishery are to be adopted at a later date (not as a part of this rulemaking) in conjunction with implementation of requirements of the Marine Life Protection Act (Chap. 1015, Stats. 1999), and completion of current efforts to develop restricted access measures for the nearshore fishery.

Regulations addressing allocation of catches of nearshore fish stocks are proposed. These regulations specify factors that the Commission will consider when allocating nearshore fish catch, and provide options for how allocations will be made (historic fishery information applied regionally, stock biomass, and economic benefit to the state). ~~**Proposed allocation regulations also specify that modification of an allocation may be designated as a routine management measure where specific criteria for the allocation are adopted as regulation.**~~

Proposed regulations will adopt changes to clarify the total allowable catch of nearshore rockfish, and will provide the authority and procedures for closing fisheries for nearshore rockfish and notifying nearshore fishery participants when Total Allowable Catches (TACs) are exceeded.

Nearshore fishery provisions currently in the Fish and Game Code are proposed to be adopted as regulations to consolidate and clarify measures associated with nearshore fishery permits and minimum size requirements. The proposed regulations will specify that one nearshore fishery permittee must be aboard a vessel, the nearshore fishery permit is revocable, and that the fee for a nearshore fishery permit is \$125.00. Proposed changes would also make regulations governing the release of undersize fish and setting of minimum size limits for nearshore fishes consistent with current Fish and Game Code Statutes.

Finally, proposed regulations include three options that would do one of the following: 1) clarify in regulation the authorized number of hooks that may be used in the nearshore fishery within one mile of shore along the coast to make this provision consistent with Fish and Game Code sections 9027 and 9027.5, 2) restrict the commercial take of nearshore fishes to handlines and rod and reel, with two hooks per line, that must be attached to the person or vessel, or 3) prohibit the commercial take, possession, landing, sale, and purchase of nearshore fish from waters off California.

Six changes are proposed to the original regulatory language in this Amended Initial Statement of Reasons (since the Commission approved going to notice with Nearshore FMP implementing regulations and proposed changes were published in the Notice Register). These are primarily technical changes to the regulations that were not included in the original Initial Statement of Reasons due to oversight or public recommendations, and are proposed now based on recent Department recognition of their absence in the original Initial Statement of Reasons and information provided by the public. These changes involve:

- 1) amendment of the title of Article 3, in Chapter 5.5 in Division 1 of Title 14, CCR. This is a technical but necessary change to the title to reflect that the regulations implement the Nearshore Fishery Management Plan.**
- 2) amending proposed Section 52.02, Title 14, CCR, that would authorize the adoption of regulatory measures in a regional management area, or a portion of a regional management area,**
- 3) amending options 1 and 3 under proposed Section 52.04, Title 14, CCR, to provide Point Arguello, Santa Barbara County, as an alternative option to Point Conception, Santa Barbara County, for the boundary line separating the central or south central, and southern, regional management areas,**
- 4) removing subsection 52.05 (c) that would have specified that ‘a modification of a direct allocation to a fishery may be designated as a “routine management measure” where the specific criteria under which the allocation is made are specified in regulation’, and adjusts subsequent subsection designations in the regulation options.**
- 5) amending option 1 under Section 150.17, Title 14, CCR, to retain the current exception to the 150 hook-two line per person restriction within one mile of the mainland shore south of Point Conception for fishermen targeting halibut, white seabass, shark skates, and rays where they possess at least 80 percent by number of these species when fishing with gear exceeding the hook and line restrictions, and**
- 6) amending option two under proposed changes to Section 150.17, Title 14, CCR, to correct an inadvertent error in the number of hooks per line that commercial fishermen taking nearshore fish stocks**

would be restricted to as a part of this option's general gear restrictions on the nearshore fishery amending Section 150.

The change to number 1 above is needed to create a Title for Article 3 that describes this as the article that deals with the Nearshore Fishery Management Plan. This title for Article 3 was inadvertently omitted from the original Initial Statement of Reasons.

The change under number 2 above to Section 52.02, Title 14, CCR, is needed to allow for the application of management measures in individual regional management areas, or portions of regional management areas. This will provide maximum effectiveness in application of management measures to areas where their use will promote sustainable management of nearshore resources. An example is if the Commission decided to adopt a gear restriction needed in one or two regional management areas, but not other areas, to keep harvests within total allowable catch levels. This change would ensure that such a management measure could be adopted.

The change under number 3 above to Section 52.04, Title 14, CCR, that would include an optional boundary between regional management areas at Point Arguello, Santa Barbara County, located about 10 miles to the north of the originally proposed boundary location at Point Conception, is in response to public recommendations. Commercial and recreational fishery representatives on the Nearshore Fishery Management Plan Advisory Committee acknowledge that the majority of fishing that occurs in ocean waters along the coastline between Point Arguello and Point Conception to the south is by vessels from ports located to the south of Point Arguello including the ports of Santa Barbara, Ventura, Oxnard, and Port Hueneme. Therefore, providing Point Arguello, Santa Barbara County, as an optional boundary between regional management areas gives recognition of the origin of the majority of fishing effort in that geographic area.

The change under number 4 above that would remove proposed Section 52.05(c) is because this language that was also included in the White Seabass FMP implementing regulations has been determined by the Office of Administrative Law (OAL) to be inconsistent with the Administrative Procedure Act, and therefore could not be approved by OAL following Commission adoption of the implementing regulations.

The change under number 5 above to Section 150.17, Title 14, CCR, would include in the proposed regulatory language a current Fish and Game Code exception for the use of hook-and-line gear with more than 150 hooks to

take halibut, white seabass, shark, skates, and rays. This exception is not expected to result in targeting of nearshore fish stocks, and will provide for continued utilization of the few nearshore fish stocks that are taken incidental to these fisheries for halibut, white seabass, sharks, skates, and rays.

The change under number 6 above to Section 150.17, Title 14, CCR, would correct an inadvertent error in the number of hooks specified in the originally proposed option 2 of this section (2 hooks) when the correct number is 5 hooks. Five hooks is the number of hooks originally proposed by United Anglers of Southern California (USAC) for this proposed gear restriction when they recommended this change to the Commission in 2000 during Commission adoption of interim nearshore fishery regulations. The Commission asked that this option be included in the mix of options to be considered during adoption of the Nearshore FMP and implementing regulations. Therefore, this correction to the number of hooks accurately reflects the original proposal put forth by USAC.

Two other changes are made to the Initial Statement of Reasons that do not involve changes to the proposed regulatory language. The Department has added the summary of peer review comments, and the Department's response to the peer review comments to the Amended Initial Statement of Reasons Section III(d) (Identification of Reports or Documents Supporting Regulation Change). The peer review comments and Department response to those comments have been available for more than 45 days at the time that this Amended Initial Statement is published in the Notice Register. Addition of the Peer Review documents at this time results from recently being made aware of this requirement during final review of the recently adopted White Seabass FMP rulemaking file by the Office of Administrative Law. Finally, the Department has indicated a change in its preferred regional management option from the three regional management area option to the four regional management area option. This preference is not reflected in the language of the regulation itself, and is based on recommendations from the public regarding regional differences in the nearshore fisheries conducted in the northern and southern areas of central California.

Regulation Changes - Necessity: Seven new regulations and changes to three existing nearshore fishery regulations are being considered for adoption. New regulations and proposed amendments are discussed in more detail below along with necessity for the changes. Regulation changes are consecutively numbered for reference in subsequent sections of the rulemaking. Section titles and numbers to be added or amended are ***italicized*** and bolded.

(1) ***Purpose and Scope (Nearshore FMP). Adds Section 52.00 to Article 3, Chapter 5.5, Title 14, CCR.*** This section describes the purpose and scope of the Nearshore FMP, and describes the location of nearshore sport fishing, commercial fishing, and Nearshore FMP regulations (described above). To assist those that must administer, and are regulated by, the requirements of the Nearshore FMP, this regulation describes the purpose of the regulations, consistency standards that govern the adoption of plan regulations, and serves to describe how the regulations are organized.

With enactment of the MLMA, California is directed to manage its fishery resources through the development and adoption of fishery management plans implemented by the Commission through the adoption of regulations. The proposed organization of regulations is expected to make the regulations more readily available and clearer to the Commission, Department, and the public, and is consistent with the organization of FMP regulations being proposed to implement the White Seabass FMP (Adopted in April 2002). Recognizing the need to organize regulations for FMPs, the Commission dedicated new Chapter 5.5 within Subdivision 1, Division 1 of Title 14, CCR, to locate FMP implementing regulations. New Articles 1, 2, and 3 within Chapter 5.5 will be devoted, respectively, to: fishery management plan regulations generally applicable to all FMPs (adopted with White Seabass FMP implementing regulations); White Seabass FMP implementing regulations; and the Nearshore FMP implementing regulations.

Regulations specific to the ocean sport fishery and commercial fishery for nearshore fish stocks will continue to be placed, respectively, in Chapters 4 and 6 of Subdivision 1, Division 1 of Title 14, CCR. That is, the proposal at this time is to leave current sport fishing regulations such as season, size, and bag limits for nearshore fish stocks in Chapter 4, beginning with Section 27.00, where they are presently found with other ocean sport fishing regulations. This is expected to help simplify the process involved with annual publication of the sport fishing regulation booklet which lists the sport fishing regulations by consecutive section numbers, and should make it easier for the sport fishing public to access nearshore fishery regulations in the same part of the booklet where they have appeared in the past.

New regulations and Fish and Game Code provisions that apply only to nearshore commercial fishing (area, season, size, gear, etc.) will be adopted as regulations in Chapter 6 of Division 1 of Title 14, CCR. The first commercial nearshore fishing regulations in Chapter 6 were adopted in October and December of 2000 (Sections 150.00, 150.01, 150.06, 150.16, and 150.17, Title 14, CCR) with the adoption of a moratorium on issuance of new nearshore fishery permits and other interim management measures to limit catches. Commercial fishing regulations for nearshore fishes are published annually in a Digest of California Commercial Fish Laws and Licensing Requirements that is

distributed to licensed commercial fishermen. To avoid duplication, Fish and Game Code statutes that are adopted as nearshore fishery regulations in Title 14, except those that confer management and regulatory authority to the Commission, will be gradually repealed through legislation.

(2) Definitions (Nearshore FMP). Adds Section 52.01 to Article 3, Chapter 5.5, Title 14, CCR. This section adds twelve definitions in the Nearshore FMP for *Allocation*, *Cape Mendocino*, *Fishery Control Rule*, *National Marine Fisheries Service*, *Nearshore Rockfish*, *Nearshore Fishery Management Plan*, *Overfished*, *Overfishing*, *PFMC*, *Quota*, *Total Allowable Catch (TAC)*, and *Unfished Biomass (B unfished)*. These regulations are needed to meet the MLMA requirement that an FMP define overfishing and to provide uniform understanding of other terminology used in the Nearshore FMP and implementing regulations. Another 24 general definitions associated with FMP management were adopted in May of 2002 along with adoption of the White Seabass FMP. These additional twelve definitions are needed because nearshore fishery management specifically involves terminology associated with regional management, fishery control rules, and determination of allocations, total allowable catches, and status of nearshore fish resources.

With regard to definitions proposed, the Department has sought to maintain a measure of consistency in its management plans and regulations with the federal fisheries management planning process and rules because the same fisheries constituents are increasingly involved with the management actions and regulatory processes occurring at both the state and federal level [involving the Pacific Fishery Management Council (Council) and National Marine Fisheries Service in addition to the Commission]. Defining common fisheries management terminology in regulation is commonly practiced by both state and federal fisheries management agencies and serves to provide all fisheries constituents with a clearer understanding of the interpretation and application of management actions and rules, and assists enforcement officers and the courts with more uniform enforcement and adjudication of regulations. With regard to subsections 52.01(i) and (j) *Overfished* and *overfishing*: The Marine Life Management Act or 1998 (MLMA) directs that each fishery management plan (FMP) or plan amendment [including the Nearshore FMP (plan) specify criteria for identifying when the fishery is overfished [Fish and Game Code Subsection 7086(a)]. This is an important element of the MLMAs primary goal of sustainable management of resources and fisheries under FMPs prepared pursuant to the MLMA (Fish and Game Code section 7056 and 7066). Adoption of a definition of overfished provides the public, the Department, and the Commission with a formula or number that determines at what point an overfished condition exists in the nearshore fisheries. This is a warning signal that adjustments to

management measures need to be explored in order to rebuild the stock and fisheries.

Nearshore fishery management is presently in what is termed a data poor situation relative to qualitative stock biomass estimates (determining the current stock size relative to the historic unfished biomass) that often involve detailed information on the size of individual year classes within a population over time. This results in the need to develop alternative methods to gauge when the stock has reached an overfished condition. Often in the case of groundfish management, which includes the majority of nearshore fish stocks, a proxy or substitute estimate for the current biomass is determined through other methods. The use of an overfished threshold of '30 percent of the estimated unfished biomass' as a measure of when the stock is overfished has been developed and utilized in recent years for determining when groundfish stocks are overfished. Therefore, this measure has been selected as a measure of when nearshore fish stocks are overfished until alternative measures become available. In the case of *overfishing*, exceeding the total allowable catch (TAC) has been set as the point where this occurs, and is generally based on the best available information on what level of harvest may occur. Exceeding a TAC provides the warning sign that an overfished condition could be possible if overfishing continues, and management is not adjusted to address overfishing.

The TAC definition for nearshore fish stocks in the current data poor condition will be a proxy for Optimum Yield because under the plan it is expected to be set initially based on historical catches in the absence of specific biomass information.

(3) *Process and Timing (Nearshore FMP).* Adds Section 52.02 to Article 3, Chapter 5.5, Title 14, CCR. This section generally directs that management of nearshore fish stocks conform to the goals, objectives, criteria, procedures, and Fishery Control Rule guidelines of the Nearshore FMP; specifies that monitoring of fishing is done annually; authorizes the Director to appoint advisory committees, including regional advisory committees, to assist the Department and Commission with development and review of fishery assessments, management options and proposals, **and plan amendments, and provides for applying management measures to a regional management area or a portion of a regional management area.** These regulations are needed to implement measures of the Nearshore FMP that, respectively, implement the above actions to meet the requirements of the MLMA .

(4) *Nearshore Fishery Management Plan Project.* Adds Section 52.03 to Article 3, Chapter 5.5, Title 14, CCR. The Nearshore Fishery Management

Plan (Plan) is being adopted to meet California Environmental Quality Act (CEQA) requirements as an environmental document [functional equivalent to an environmental impact report (EIR)]. The Nearshore FMP includes possible “projects” (Alternatives in the Plan) under CEQA involving different combinations of management methods and measures adopted to utilize and sustain nearshore fish stocks and fisheries. The methods and measures adopted by the Commission when it approves and certifies the Plan are of great interest to both extractive and non-extractive users of these resources because of the real and potential effects on livelihoods, recreational opportunities, and marine resources. Therefore, this proposed regulation is needed to provide a clear understanding of the project alternative in the Nearshore FMP that the Commission selects for use in managing nearshore fisheries.

The preferred project alternative (Option 1) is expected to provide a control-rule process that recognizes the data poor situation now existing with nearshore resources and fisheries and identifies a mechanism, based on accepted fisheries management protocols that can be used to set harvest guidelines or total allowable catches (TACs) that would result in sustainable nearshore resources and fisheries, in compliance with the MLMA.

Options 2 and 3 are measures that are more restrictive to commercial sectors of the fishery than Option 1, but are included for the Commission’s consideration with respect to issues such as the ability of the resource to support both recreational and commercial fishing and the ability of these options to meet the goals and objectives of the MLMA.

(5) *Regional Management Options. Adds Section 52.04 to Article 3, Chapter 5.5, Title 14, CCR.* Describes three regional management options that include: two regions (a north and a south region that reflect the regions existing under federal groundfish management rules) divided at a point on the coast near Cape Mendocino, Humboldt County); three regions that creates a northern, central, and southern region divided at Cape Mendocino and Point Conception **or Point Arguello) (the preferred option)**, Santa Barbara County, **(the Commission will make a determination at the time of adoption;** and four regions (northern, north-central, south-central, and southern) **(the preferred option). An option for setting the boundary between the central and southern regional management areas at Point Arguello would make the boundary consistent with the existing boundary of the restricted access finfish trap fishery at Point Arguello (Fish and Game Code Section 9001.5).**

The regional management approach is supported by most of the public that have been involved with, and commented on the various options being considered (most support the three or four subregion options). Adoption of the preferred

regional management option as a regulation is needed to clarify for the public and fisheries managers those areas of the coast that will be managed as a unit under the control rules selected to achieve the goals and objectives of the plan.

Based largely on consideration of public recommendations, the Department's preferred alternative for regional management was changed from the original three management area option to the four management area option, which will simply create a north-central and a south-central regional management area where there would otherwise have been one management area.

(6) *Allocation, Factors the Commission will Consider (Nearshore FMP). Adds Section 52.05 to Article 3, Chapter 5.5, Title 14, CCR.* Directs that allocation be consistent with the allocation approach recommended in the Nearshore FMP (regionally and based on historic catch) and, in the case of nearshore rockfish, with federally established allocations until management authority is assumed by the state. The regulation would describe factors for Commission consideration during a change in allocation of nearshore fishery stocks, including;

- _____ (1) present versus historical participation in the fishery;
- (2) the economics of the fisheries;
- (3) local community impacts;
- (4) product quality and flow to the consumer;
- (5) gear conflicts;
- (6) non-consumptive values,
- (7) fishing efficiency;
- (8) and recreational versus commercial fishery factors

_____ ~~The regulation would specify that modification of a direct allocation to a fishery may be “a routine management measure” where criteria under which the allocation is made are specified in regulation.~~ Three allocation options are provided for consideration and are based on either historic fishery information applied regionally to allocate annual Optimum Yields/Total Allowable Catches (OYs/TACs) (preferred option), or stock size (for which estimates do not presently exist), or economic benefit to the state (for which detailed information is not available). These provisions need to be adopted as a regulation because they describe the criteria that must be considered during a change in allocation of nearshore fish stocks, describe the process of allocation that will be utilized, and provide a focus and rationale for efforts to obtain information on nearshore stocks and fisheries needed to manage utilizing allocation tools.

(7) *Take of Nearshore Rockfish. Adds Section 52.09 to Article 3, Chapter 5.5, Title 14, CCR.* Identifies the Total Allowable Catch (TAC) for nearshore rockfish as the amount set by the federal fisheries management process until management authority for nearshore rockfish is transferred to the

state, and establishes a mechanism for timely closure, and public notification of a closure, of the nearshore fishery when TACs are exceeded or projected to be exceeded. These changes are needed to clarify the authority under which annual harvests of nearshore rockfish are set, to provide for timely closures of fisheries to avoid exceeding annual harvests, and noticing those closures.

(8) *Nearshore Fishery Permits. Amends Section 150.01 in Chapter 6, Title 14, CCR.* Incorporates provisions of Fish and Game Code Section 8587 into this regulation within Title 14 to assist in consolidating and clarifying nearshore commercial fishery provisions regarding permit suspension, revocation, and number of permits needed aboard the vessel that are presently found in different parts of the Fish and Game Code. This regulation is needed to clarify for fishermen and enforcement staff that only one valid permittee needs to be aboard the vessel.

(9) *Commercial Take of Nearshore Fish. Amends Section 150.16 in Chapter 6, Title 14, CCR.* Amends the current requirement to sort nearshore fish for which there are trip limits, size limits, or optimum yields, to include all species defined as nearshore fish. This will require some additional sorting of about eight species of nearshore rockfish that do not have a minimum size limit at this time, and are presently landed under the aggregate OY for nearshore rockfish, and will require sorting of monkeyface eel. Also the changes proposed to this section will incorporate provisions of Fish and Game Code Section 8588 into Commission regulation directing that minimum size limits be based on the best available scientific information, require the measuring of nearshore fishes immediately upon capture, and require their release and return to the water if shorter than the minimum size. These changes are needed to provide improved estimates of total catch for nearshore species that are presently lumped together in landing data, providing little information on their total commercial take. Also, these changes consolidate the balance of statutory provisions regarding nearshore species with size limits, and the procedure for measuring and releasing fish, into a Commission regulation that provides for comprehensive management of nearshore fishes in line with the goals and objectives of the Nearshore FMP.

(10) *Authorized Gear to Take Nearshore Finfish Within One Mile of Shore. Amends Section 150.17 in Chapter 6 of Title 14, CCR.* This regulation change deals with authority to fish for nearshore fishes and includes three possible options. Option 1 correctly describes the area where restrictions on hooks and lines specified in this section are applicable north of Pigeon Point, San Mateo County. Option 1 would adopt into one regulation the current statewide limitations on use of more than 150 hooks or 15 hooks per line on a vessel fishing within one mile of shore (except offshore of the Channel Islands in southern California). In December of 2000, the Commission adopted interim nearshore fishery management measures (including Section 150.17, Title 14,

CCR) that eliminated two area exceptions to the upper limit of 150 hooks and 15 hooks per line on a commercial nearshore fishing vessel (in two small areas of the north coast off Marin and Humboldt Counties) [see Fish and Game Code Subsection 9027(b)]. However, when adopting this measure as a regulation, the prohibition on more than 150 hooks, 15 hooks per line, etc. north of Pigeon Point was inadvertently limited to the mainland coast, which differs from the language of Fish and Game Code Section 9027 that does not limit these restrictions to just the mainland coast. South of Pigeon Point, San Mateo County, (in Fish and Game Districts 17, 18, and 19), the prohibition on use of more than 150 hooks applies only along the mainland coast pursuant to Fish and Game Code Section 9027.5. The regulatory changes proposed to Section 150.17 under Option 1 will consolidate these statewide provisions on hooks and lines into Section 150.17. This regulation is needed to help clarify these provisions for those fishermen accessing the regulations. **Also, proposed changes made in the regulations accompanying this Amended Initial Statement of Reasons will incorporate an existing exception to the 150 hook limitation south of Point Conception, Santa Barbara County that was enacted at the same time as the original hook restriction for Fish and Game Districts 17, 18, and 19 (Fish and Game Code Section 9027.5). This exception that was left out of the originally proposed regulatory changes due to an oversight, provides for the continued use of hook and line gear to take halibut, white seabass, shark, skates, and rays where at least 80 percent by number of fish in possession are the above target species. This exception to the hook restriction south of Point Conception is not expected to result in adverse impacts to nearshore fish stocks as, generally, few rockfish are taken along with the target species. However, this exception will continue to provide for the utilization of those nearshore fishes taken incidental to the target fisheries, and will reduce discards of these incidentally taken species.**

Option 2 proposes more restrictive measures on fishing gear that would limit all commercial fishing for nearshore fishes within one mile of shore to the use of hand-line and rod-and-reel fishing gear with not more than ~~two~~ **five** hooks attached to any one line, and lines required to be attached to the person or vessel. This option was proposed by United Anglers of Southern California (UASC) and was considered by the Commission in late 2000 (at the same time as, but in a separate rulemaking from, the Commission's adoption of interim nearshore fisheries management regulations). The Commission deferred action on this gear request by UASC until consideration and adoption of the Nearshore FMP, and directed the Department to include this alternative for consideration with others during its adoption.

Option 3 would prohibit the commercial take, possession, landing, sale, and purchase of the 19 nearshore species of fish from waters off California. This

option was proposed by recreational fishing interests for consideration during Commission adoption of the Nearshore FMP. The Commission directed that it be included in the regulatory proposal for consideration during adoption of the Nearshore FMP.

The necessity of considering options two and three above is based on concerns that nearshore fish stocks may not be able to sustain themselves under the current level of exploitation by both recreational and commercial nearshore fisheries, and the need to consider a wide range of alternatives for sustainable management of the resource. Therefore these options, while potentially very restrictive to commercial nearshore fishery interests, are included for Commission consideration and adoption should a determination be made that the resource cannot support the current commercial fisheries.

Transition of Management Authority from Federal to State: Adoption of the Nearshore FMP and regulations to implement the plan is also expected to be an important step in support of a transition of management authority for nearshore groundfish species (including the 16 currently defined as nearshore species) from the U.S. Department of Commerce to the State. The plan and implementing regulations will clarify the State's commitment and capability to manage nearshore fish stocks. Due to the prominent role that nearshore stocks of federally managed groundfish play in California's nearshore fisheries, the Commission and Department are interested in having full management authority for nearshore groundfish. In order to achieve this it is expected that California will need to have an operational Nearshore fishery management plan in place to demonstrate sustainable management capability and ensure consistency with federal Sustainable Fisheries Act and groundfish management policies and standards.

Costs to the Department:

Costs to the Department associated with adoption and implementation of the proposed regulations are primarily those related to management, enforcement, and research needed to achieve nearshore fisheries management and regulation under the Nearshore FMP (Table 1).

Table 1. Estimated Annual Nearshore FMP Management, Enforcement and Research Costs

Description	Baseline	Redirection	New	FMP Ref. Sec.*
Management	\$1,294,000			Sec.1, Ch.5
Restricted Access	\$ 90,000		\$90,000	
Regional Allocation	\$ 90,000		\$90,000	
Enforcement	\$1,382,000			Sec.1, Ch.5
MPA Component			\$1,100,000	
Research	\$1,106,000			Sec.1, Ch.5
Coordination Unit		\$290,000		
North Coast Region		\$ 76,500	\$ 25,500	
Central Coast Region		\$917,500	\$306,500	
South Coast Region		\$636,000	\$212,000	
CFIS/MFSU			\$170,000	
Log Book Analysis			\$130,000	
Socio-Economic Studies			\$210,633	
Stock Abundance Studies			\$500,000	
Age/Growth Studies			\$238,700	
Education/Outreach			\$157,000	
Total Cost	\$3,962,000	\$1,920,000	\$3,230,333	

* For additional detail on how cost estimates were derived and further description of the identified needs, refer to the appropriate sections of the Nearshore FMP.

The current costs of management, enforcement, and research are based on expenditures during the state fiscal year for 2000-2001 (July 1 through June 30 of the following year). These baseline costs are anticipated to continue at this level with implementation of the Nearshore FMP.

Management

Department staff will continue to review management approaches already in use within and beyond the State of California. Staff will prepare overviews, analyses, and information for consideration by constituents and the Commission. Currently, there are 21 scientific, management, and administrative staff dedicated to nearshore finfish management. Additional management coordination with the Pacific Fishery Management Council (PFMC) will continue for nearshore and shelf groundfish species as resource, fishery needs, mandates, and policies change over time.

Meetings have been convened throughout the state to gather public and stakeholder input to aid in developing nearshore fishery management alternatives. These regional meetings will continue during the Nearshore FMP adoption and implementation process. As required under the MLMA, ongoing

review of management alternatives and coordination of management processes will continue once the FMP is implemented, and modifications or mitigation will occur as necessary.

Enforcement

The Department's Marine Region deploys 57 law enforcement officers, 14 of which are specifically dedicated to nearshore efforts. Additionally, one 54 ft (16.5 m) patrol boat and her crew is funded exclusively by the MLMA. However, all of the Department's marine patrol boats and crews serve to enforce nearshore fishery regulations, since Department officers are charged with enforcing all sections of the Fish and Game Code and the CCR, Title 14.

Regulation compliance through enforcement and education activities will depend on the extent of time, area and catch limitations adopted by the Commission for the nearshore fishery. Consequently, it is difficult to estimate future enforcement funding needs. However, it is anticipated that enforcement costs for newly-established marine protected areas (MPAs), when they are ultimately established through the Marine Life Protection Act Process, could amount to \$1.1 million annually. Most of this money would be used to increase "on-the-water" patrol boat time. However, MPA costs are not direct costs that will result from adoption of Nearshore FMP implementing regulations.

Research

Both new funds and redirected monies from other Marine Region activities will be necessary to undertake the research component of the Nearshore FMP. Specifically, these tasks include assembling or updating all known information about the species or species groups, the nearshore fishery and its participants, conducting identified monitoring and research programs, collaborating with constituents or researchers on assessment, monitoring, or other projects to meet the objectives of the Nearshore FMP, analyzing data collected during plan implementation, and providing information and research findings to stakeholders and interested persons.

- (b) Authority and Reference Sections from Fish and Game Code for Regulations:

Authority: Sections 200, 202, 205, 240, 7071, 7072, 7075, 7078, 7652, 8587.1, and 8588, Fish and Game Code.

Reference: Sections 96.5, 97, 97.5, 98, 2362, 7050, 7051, 7055, 7056, 7060, 7070, 7071, 7072, 7075, 7078, 7082, 7083, 7086, 7087, 7088, 8383, 8383.5, 8385, 8587, 8587.1, 8588, 8623, 9001.5, 9001.6, 9001.7, 9027, and 9027.5, Fish and Game Code.

(c) Specific Technology or Equipment Required by Regulatory Change:

None.

(d) Identification of Reports or Documents Supporting Regulation Change:

California Department of Fish and Game, 1999, Biological Aspects of Nearshore Rockfishes of the Genus *Sebastes* from Central California, with Notes on Ecologically Related Sport Fishes. Fish Bulletin 177, 199 pp.

California Department of Fish and Game, June 2002, Nearshore Fishery Management Plan Peer Review Report and Department of Fish and Game Response to Peer Review Report. 13 pp.

California Department of Fish and Game, 2000, Recommendations for the Interim Management of the Nearshore Fishery, Prepared for the California Fish and Game Commission Meeting December 8, 2000 .

California Department of Fish and Game, May 9, 2002, Nearshore Fishery Management Plan, 367pp.

California Department of Fish and Game, February 3, 2000, Department Recommendations Concerning the Proposal by United Anglers of Southern California to Restrict the Type and Amount of Gear That Can Be Utilized by a Nearshore Commercial Fisherman.

National Marine Fisheries Service, 2001, Federal Register, Vol. 66, No. 8/Thursday, January 11, 2001/ Rules and Regulations, 31pp.

National Marine Fisheries Service, 2001, Federal Register, Vol. 66, No. 129/ Thursday, July 5, 2001 / Rules and Regulations, 3pp.

National Marine Fisheries Service, 2000, Marine Recreational Fisheries Statistics Survey (MRFSS). Pacific Coast.
www.st.nmfs.gov/st1/recreational/survey/index.html (2/01).

Pacific Fishery Management Council, October 2000, Status of the Pacific Coast Groundfish Fishery through 2000 and Recommended Acceptable Biological Catches for 2001, 145 pp.

Restrepo, V.R., G.G. Thompson, P.M. Mace, W.L. Gabriel, L.L. Low, A.D. MacCall, R.D. Methot, J.E. Powers, B.L. Taylor, P.R. Wade, and J.F. Witzig, 1998, Technical guidance on the use of precautionary approaches to implementing national standard 1 of the Magnuson-

Stevens Fishery Conservation and Management Act, NOAA Technical Memorandum NMFS-F/SPO-#, 22 pps.

- (e) Public Discussions of Proposed Regulations Prior to Notice publication: Early in the development of the Nearshore FMP the Department created a Nearshore FMP Advisory Committee comprised of representatives of the recreational and commercial fishing sectors, environmental community, and academia to advise the Department on development and issues to be addressed in the FMP. The advisory committee included 20 fisheries, environmental, and academic representatives and meetings were professionally facilitated by an outside company titled "Resolve, Inc." The advisory committee began holding two-day meetings in January 2001, with additional meetings held during March, April, July, and September to consider a broad array of management issues including harvest guideline options in the Nearshore FMP.

The proposed implementing regulations for both the White Seabass and Nearshore FMPs were discussed at the July 12-13, 2000 advisory committee meeting, and the Nearshore FMP regulations were discussed again at the September 20-21, 2001 advisory committee meeting. Adoption of the White Seabass FMP and implementing regulations, which preceded consideration of the Nearshore FMP, includes overarching FMP regulations common to implementation of all subsequent FMPs, including the Nearshore FMP.

Also, the Commission took public testimony on the Nearshore FMP and regulations at six additional public meetings held during September and October of 2001 to provide the public with additional opportunity to comment on the plan.

At the Commission's December 7, 2001 meeting in Long Beach, the Department provided a summary of peer review and public comments on the plan. This resulted in a decision to delay submission of the draft Nearshore FMP to the Commission until May of 2002 following a reorganization and redrafting of the plan to address peer review and public concerns and comments.

IV. Description of Reasonable Alternatives to Regulatory Action:

- (a) Alternatives to Regulation Change: The MLMA enacted by the Legislature directs the development of a Nearshore FMP consistent with the MLMA on or before January 1, 2002 and also directs the adoption of regulations necessary to implement the plan within 60 days of Commission adoption of the FMP. This leaves little discretion regarding the adoption of regulations, and is tacit recognition that a fishery

management plan cannot reasonably be implemented unless regulations are adopted that specify and clarify for fisheries managers and those being regulated, the management process and measures that will be employed. Adoption of regulations will give management processes and measures the force and effect of law. Fishery management plans are traditionally implemented through adoption of rules and regulations adopted at the state and federal level, with management adjusted annually through the addition or amendment of rules and regulations.

Reliance on current interim nearshore fisheries management regulations in place since December of 2000 is one of the options in the Nearshore FMP, but is not considered a viable long term alternative to the adoption of FMP implementing regulations. While current nearshore fisheries regulations are useful as interim measures in slowing harvests, protecting subadult nearshore fish, and preventing further explosive growth in fishing effort, they are not expected to achieve long-term sustainable management called for by the MLMA. Therefore, additional measures are needed in order to achieve the comprehensive management called for by the MLMA.

- (b) No Change Alternative (adopt no Nearshore FMP implementing regulations, but continue use of current regulations). This alternative does nothing to further more comprehensive nearshore fisheries management and does not bring the plan into conformance with the MLMA through adoption of implementing regulations as directed by the Legislature. This, in turn, would jeopardize future management decisions made by the Commission based on the Nearshore FMP, impede transfer of management for nearshore fisheries to the state, and leave management decisions more vulnerable to legal challenges. This alternative would result in continued management of nearshore fish stocks and fisheries under current interim laws and regulations. While this alternative is not expected to result in immediate severe adverse impacts to nearshore fish stocks and fisheries, due to the generally conservative nature of current OYs adopted by the Pacific Fishery Management Council and Commission during 2001, it would forego the greater opportunity for sustainable management under a comprehensive fishery management plan.
- (c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

V. Mitigation Measures Required by Regulatory Action:

The environmental document titled Nearshore Fishery Management Plan - Draft is attached and referenced. The proposed regulatory action will have no negative impact on the environment; therefore, no mitigation measures are needed.

VI. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

Generally, participants in the commercial sectors of the nearshore fishery are small business operators. The nearshore commercial fishery is conducted from small to moderately sized vessels (about 12-45 feet in length) that utilize primarily hook-and-line and trap fishing gear in nearshore waters. From one to two fishermen typically operate from a single vessel. Also, owners and operators of commercial passenger fishing vessels (CPFVs), that carry anglers fishing for a fee, operate from most major ports off California and fish, to varying degrees, for nearshore fishes. Discussions of the "Socioeconomic Benefits of the Fishery" and "Socioeconomic Dimensions of the Fishery" are included in Section 1, Chapter 4 of the Nearshore FMP.

Several measures that may potentially affect the nearshore fisheries are included with regulations being considered for adoption. Measures being considered range from no change in current management to a total prohibition on commercial sale of nearshore fish.

Department Recommended Nearshore Fishery Management Plan "Project": As background, the Department's Recommended Nearshore FMP Project involves a combination of management measures including a fishery control rule that integrates essential fisheries information (EFI) about the demographics of target species, the ecosystem effects of the fishery, and the effects of environmental change on the fishery. It then sets criteria for three different levels of availability of EFI: data-poor, data-moderate, or data-rich circumstances. Finally, it designs management strategies that include more or less precaution, depending on the level of EFI.

The current level of availability of EFI for almost all nearshore fishes is data poor which results in greater precautionary adjustments being utilized to address uncertainty about ecosystem effects on stocks and fisheries. Stage 1 management is slated to include a suite of management measures that can affect fishery participants. These include the use of catch history (such as that being utilized now for California sheephead, cabezon, and greenlings) for setting total allowable catches (TACs) for each species or species group of nearshore fishes, regional management of nearshore fish stocks (**four three** regions under the Department's preferred recommendation), allocation of the TACs of nearshore fishes between recreational and commercial fisheries, marine protected areas (MPAs) (where no fishing occurs), and restricted access (seeks to align the fishing capacity of the commercial fisheries with available fishery resources consistent with sustainable use policy of the MLMA).

As indicated above, development of MPAs and a restricted access program are works-in-progress. Therefore, in the absence of specifics regarding these measures, estimates of the economic impacts on businesses are speculative. These measures may have immediate and potentially protracted negative economic effects on nearshore fishery businesses due to their expected curtailment of fishing in MPAs and by elimination of some fishery participants that do not meet restricted access criteria. However, in the long-term, healthier (more sustainable) stocks of nearshore fishes and a nearshore fleet that is in better balance with available nearshore resources, should have positive economic effects on those continuously involved in the fishery.

This leaves the effects of setting TACs using catch history, regional management, allocation, and gear restrictions (the latter are alternatives to the "recommended" management approach) as the principal measures being considered that may have an economic impact on small businesses.

Determination of Total Allowable Catch (TAC): TAC for Stage 1 (data-poor) management will utilize catch history under the preferred option. Determination of the TACs for individual species of nearshore fishes, and for nearshore rockfish as a species complex, are proposed to be the same as last year. Therefore, adoption of annual catches as proposed should result in no immediate new economic effects on the fisheries. The proposed regulations would authorize the Commission to use measures such as restrictions in catch, time, area, or gear to keep harvests within total allowable catches. These actions have the potential for causing adverse economic effect in the fishery in the short term, but should result in long-term positive impacts due to increased sustainability of the nearshore fishery resources resulting in increased total fishery harvests over time.

Regional Management (proposed Section 52.04).

Three regional management options are proposed that include: two management regions that correspond to the current management areas created under the Pacific Fishery Management Council's Pacific Coast Groundfish Fishery Management Plan; three management areas south of the California-Oregon border, a north coast region, a central coast region, and a south coast region; and four management areas south of the California-Oregon border (**the Department's recommended preferred alternative**), a north coast region, a north-central coast region, a south-central coast region, and a south coast region.

Economic impacts on the nearshore fisheries as a whole are not expected to result from adoption of a regional management option because no changes are proposed at this time to the total annual catches of nearshore fish stocks. Allocations of the total annual harvests among regions might change the total take of nearshore fish stocks within a particular region, compared with recent historic catches. However, active markets will tend to distribute nearshore fisheries goods and services statewide, according to consumer demand.

Potential economic impacts from allocation of annual catches for a fishery in different regions might range from no impact, to moderate impacts, depending on the region, the species, or species group for which annual catches are being allocated, and the allocation methodology utilized to apportion total annual harvests between regions. The current nearshore fishery has expanded coastwide in recent years with the fishery generally expanding from south to north in the state. Also, different species of nearshore fish predominate in the catch in different areas of the coast. If catches made during recent years are used to apportion annual harvests within a fishery, as anticipated, the impacts are expected to be negligible. However, if an extended past series of years of either sport or commercial catch data is used to determine allocations within a fishery for different regions in the state, allocations of annual harvests might differ from the current proportions that exist for landings made along the coast. This might result in a fishery in a region being allocated a larger or smaller catch than has traditionally been taken during the year. Economic impacts are expected to be dealt with and losses minimized prior to allocation of nearshore annual catches by region through more detailed examination of catch records for species, pounds and value of fish caught and landed in each region, and through interactions with fishery participants. Long-term economic benefits are expected as a result of abating the collapse of the nearshore fishery, due to overharvesting under current regulations, and benefits will result from rational allocation approaches that maximize the value of the resource used.

Allocation (proposed Section 52.05):

Options for determining allocation are proposed. Presently Commission allocations between sport and commercial fisheries have been made only for California sheephead, cabezon, and greenlings using historic catch data, while the Council has allocated nearshore rockfish. If allocation ratios for these species change due to a change in the method of determining allocation, either a positive or negative economic impact could result to one of these fisheries depending on whether the fishery is allocated more or less of the annual harvest. No changes were made in 2002 to the authorized annual harvests (OYs) set during December of 2000 for these species, so potential economic impacts of changes in allocation would result from a shifting of authorized take from one fishery to the other. Also, if the Commission chose to reallocate unused annual catch from a fishery that is not expected to fully utilize its allocation, this could have an immediate positive economic impact on the fishery receiving the additional allocation by providing for its continued operation, and would result in full utilization of the entire authorized annual catch.

The current allocation process for sheephead, cabezon, and greenlings utilizes a ratio of historic catches for 1983 through 1989 and 1993 through 1999. The Department's preferred Option 1 would utilize this same approach but apply it regionally to three regions along the coast, and include a careful review of commercial and recreational landings. This option may result in some changes in allocation of cabezon and greenling (allocation would not be expected to change for sheephead which are taken primarily in one of these regions), if the ratio of catches for the central and northern regions differs from the current statewide allocation, which presently allocates the majority of annual harvest to the recreational fishery. Regional data have not yet been developed to further evaluate the effects of allocation on a regional basis.

Also being considered are an allocation based on stock size, and an allocation based on economic benefits to the state. There is insufficient information presently available to determine whether there would be a significant change in allocation ratios between sport and commercial fisheries under the three options. Estimates of actual stock sizes are not presently available to determine if greater or lesser annual harvests could be authorized under this option (Option 2). Recreational interests would benefit initially under this alternative. Subsequently, as biomass increases, increasing annual harvests, up to a point, would be allocated to the commercial fishery under this option until parity between sport and commercial annual harvests is reached at which point their annual harvest would increase equally. With regard to allocation based on economic benefit to the state (Option 3), statewide and regional economic and fisheries data needed to allocate nearshore fishery TACs on this basis are not presently available. Therefore, allocation projections between major user sectors and estimates of economic impacts cannot be derived at this time.

Limit Commercial Fishing for Nearshore Fishes to Handlines and Rod-and-Reel Gear (proposed amendments to Section 150.17):

This proposal was considered late last year in a separate rulemaking during Commission adoption of interim nearshore fisheries management regulations. As indicated above, the Commission declined to proceed with the proposal at that time and directed that it be considered as a management alternative within the Nearshore FMP.

There are several economic aspects to consider in contemplating a gear restriction that would constrain commercial fishermen in the nearshore to using rod-and-reel/handline gear. In general, this approach will result in substantial increases in operating costs to the commercial fishery, because commercial fishermen are required to use relatively inefficient hand-line or rod-and-reel gear (two lines per person with ~~two~~ **five** hook limits per line).

Increased costs of harvesting will result in increased prices to end buyers and consumers. As a result, individual consumers will likely decrease their demand for commercial products in response to increased prices (due to price elasticity of consumer demand). Reduced demand and purchases of commercial products, plus shifts to substitutes for commercial products, further exacerbate direct economic losses to fishermen as their market share for commercial products erodes. Empirical evidence and economic theory project that consumers will purchase less of the fishery products when the price is increased. As a result, consumer market share for nearshore seafood products will erode as consumers, faced with price increases, choose to purchase fewer nearshore fishery products or choose to purchase more of some other substitute product. In either case, the commercial fishing industry loses some measure of market share for its nearshore fishery products.

Effects on profits and business activities in the commercial sector ultimately radiate into the local economy and fishing community as changes to revenue, income, and employment. The relatively inefficient rod-and-reel gear reduces harvest efficiency for the fishermen (relative to existing commercial gear), causing fishermen to either fish this gear harder in order to maintain their economic standing or reduce their scale of business operations to accommodate the harvest limitations of the gear, or both. Fishing the gear harder could entail an increase in number of trips per day or hours fished per day. Alternatively, since the gear requires direct attachment to a person, the fisherman may try to employ additional crew (subject to physical and safety limitations of the vessel) in order to fish more hooks at a time. In either case, the net economic returns from commercial fishing are curtailed for small, medium, and large-scale fishing operations that harvest the nearshore area.

A hand-line/rod-and-reel gear limitation and the resulting revenue effect to fishermen, would likely put moderate-to-large-scale commercial fishing operations out of business if they are primarily dependent on the nearshore fishery. This is because the return on investment, or capital, under this gear constraint would probably not cover their fixed costs for vessel and equipment. Furthermore, the resale and salvage value of their existing gear (and vessel) is greatly diminished, hampering their ability to liquidate assets and invest in some other occupation or fishing activity.

Another result of increased harvest costs occurs in the consumer markets for nearshore fishery products, where prices for fishery end products would increase. This is the result of increased costs of production at the harvest and intermediate product levels being carried into the consumer market (where fishery end products and services are bought and sold).

Losses in market demand and market share result in decreases in revenue and revenue potential. Under declining market conditions there is some critical level of market share below which the product is no longer viable. When this happens the product leaves the consumer domain of normal goods, and either disappears or is relegated to an inferior good or specialty item. Complementary goods or bundled items that would usually be purchased along with the fishery product are also affected as their market demand declines too. Lastly, the ripple effect of declining market share and revenue losses for commercial fishermen comes to rest in the local economies and fishing communities dependent on the nearshore. Such downstream effects can manifest as changes in entire local economies, including ancillary industries, local personal income, and local employment.

Restrict the Take, Possession, Landing, Sale, and Purchase of Nearshore Fish Stocks from Waters off California (proposed amendment to Section 150.17):

This option (Option 3) would likely result in the elimination of the commercial take of nearshore fish stocks. The annual ex-vessel value of commercial landings of nearshore fish stocks in 1999 was approximately \$3.3 million, or the equivalent of \$3.5 million in year 2000 dollars. This could be a fair approximation of the expected economic impact to commercial fishermen of a total commercial closure to the take of nearshore fish stocks in state waters off California. The economic impact to associated fish businesses would be additive to the ex-vessel value impact to the extent that these other fish businesses rely on the purchase and sale of nearshore fish stocks. Using economic multipliers for the State, the projected economic loss of \$3.5 million (ex-vessel), would result in an additional loss of \$3,285,900 to related industries in the State (that rely on or use the ex-vessel products). Consequently, the total economic loss to the State may be as much as \$6.8 million.

Furthermore, as for the hand line/rod-and-reel Option 2 above, the resale and salvage value of existing gear (and vessel), while not quantified here, is greatly diminished under this option, hampering fishermen's ability to liquidate assets and invest in some other occupation or fishing activity.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

Some of the alternatives associated with regulatory options being considered for adoption could result in the elimination of jobs within the state. The most apparent of these are options that would result in significant restriction of commercial fishing for nearshore fish stocks to rod-and-reel fishing gear, and a prohibition on the take, possession, landing, sale, or purchase of nearshore fish stocks from waters off California (Options 2 and 3 under Section 150.17) [also see discussion above under VI(a)]. At a minimum, it is likely that either of these options would result in the need for some commercial nearshore fishermen that now rely on this fishery to consider other lines of work.

- (c) Cost Impacts on a Representative Private Person or Business:
The cost impacts to a representative private persons or business are generally included in the discussion of impacts under (a).
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

The costs to the State are discussed at the end of Section IV above under Description of Regulatory Action.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None

Updated Informative Digest (Plain English Overview)

Existing laws and regulations governing fisheries for nearshore fish stocks in ocean waters off California include a combination of state and federal laws, rules, and regulations adopted by the Fish and Game Commission (Commission), Pacific Fishery Management Council (Council), California Legislature, and United States Congress. A total of 19 species of fish are presently identified in existing regulation as nearshore fish stocks [Section 1.90, Title 14, California Code of Regulations (CCR)]. These include 16 species of federally managed groundfish [thirteen species of nearshore rockfish (blue, black, black-and-yellow, brown, calico, China, copper, gopher, grass, kelp, quillback, and olive rockfishes, and treefish), cabezon, kelp greenling, and California scorpionfish], and three state managed species (California sheephead, rock greenling, and monkeyface eel).

Under existing law, the Marine Life Management Act of 1998 (MLMA) directs the Commission to adopt a Nearshore Fishery Management Plan (Nearshore FMP or Plan), and to adopt implementing regulations not later than 60 days after adoption of the Nearshore FMP. The Nearshore FMP that these proposed regulations will implement, is prepared as a “project” under the California Environmental Quality Act (CEQA) . Regulations are proposed to implement the Nearshore FMP, including options from which the Commission will select measures for management of nearshore fisheries to meet the goals and objectives of the Plan and policies of the MLMA. Also, amendments to current nearshore fishery regulations are proposed, as described below.

Existing laws and regulations involving nearshore fisheries and the Nearshore FMP include the following Fish and Game Code Statutes that:

1. provide authority for the Commission to adopt regulations that implement a fishery management plan or plan amendment and make inoperative any fishery management statute that applies to that fishery [Fish and Game Code subsections 7071(b) and 8587.1(b)],
2. provide authority for the Commission to adopt regulations as it determines necessary, based on the advice and recommendations of the department, consistent with the process specified in the MLMA [Fish and Game Code subsections 7071(c) and 8587.1(a)],
3. direct the Commission to adopt a fishery management plan for the nearshore fishery on or before January 1, 2002 [Fish and Game Code subsection 7072(d)],
4. provide legislative findings and declarations for nearshore fisheries management (Fish and Game Code Section 8585.5),
5. add definitions of nearshore fish stocks, nearshore fisheries, and nearshore waters (Fish and Game Code Section 8586),

6. create a nearshore fishery permit and fee for commercial nearshore fishery (Fish and Game Code Section 8587),
7. authorize the Commission to regulate commercial nearshore fisheries (Fish and Game Code sections 7071 and 8587.1),
8. authorize the Commission revocation of a nearshore permit for a violation of nearshore statutes (Fish and Game Code Section 8589.5),
9. specify the deposition of funds from the nearshore permit and the source of funding to support preparation of the Nearshore FMP (Fish and Game Code Section 8589); and

Title 14 regulations adopted by the Commission that:

1. define *Nearshore fish stocks, nearshore fisheries, and nearshore waters* (Adoption of this regulation in December 2000 included making Fish and Game Code Section 8586 inoperative) (Section 1.90, Title 14, CCR),
2. authorize a general sport fishing daily bag and possession limit of 10 rockfish in combination of species that applies to nearshore rockfishes (Section 27.60),
3. describe authorized sport fishing seasons, minimum sizes, daily bag limits, and fishing area restrictions for nearshore rockfish, cabezon, kelp and rock greenlings, California sheephead, and California scorpionfish (Sections 27.60, 27.65, 28.26, 28.28, 28.29, 28.54, and 28.55, Title 14, CCR),
4. describe fishery management areas and cowcod closure areas where restrictions or special authorizations for sport take of nearshore fishes apply (Section 27.82, Title 14, CCR),
5. authorize the transport of sport-caught fish through a closed area (Section 27.67, Title 14, CCR),
6. set a limit of two hooks and one line when rockfish or lingcod are aboard (Section 28.65, Title 14, CCR),
7. place a moratorium on the issuance of new nearshore fishery permits and establish a control date of December 31, 1999 for purposes of establishing a restricted access nearshore fishery (Section 150, Title 14, CCR),
8. specify that a nearshore fishing permit is only required for the commercial take of the 10 species of nearshore fishes originally described in Fish and Game Code Section 8588 (Section 150.01, Title 14, CCR),
9. establish a control date of October 20, 2000 for the purpose of developing and implementing a gear endorsement program (Section 150.03, Title 14, CCR),
10. list the closed commercial seasons and areas for cabezon, kelp greenling, rock greenling, lingcod, sheephead, and specify the commercial minimum size limits for 10 nearshore fish stocks and direct that species with trip limits, size limits, or optimum yield specified shall be sorted prior to

weighing and weight reported separately on the fish receipt (Section 150.16, Title 14, CCR), and

11. limit the number of hooks that may be used on a vessel to take nearshore fish stocks for commercial purposes within one mile of the mainland shore (Section 150.17, Title 14, CCR).

Regulation changes being considered by the Commission will add new nearshore fishery management provisions to **Article 3 of Chapter 5.5 of Subdivision 1, Division 1, of Title 14, CCR** to implement a Nearshore Fishery Management Plan, describe the Plan's purpose and scope, process and timing of monitoring, assessment, and management of nearshore fisheries under the plan, and provide definitions of terms used in the Plan and implementing regulations. Also, regulations proposed to be added to Chapter 5.5 describe "project" alternatives (combinations of management measures) from which the Commission will select one "project" (one or more management measures) for management of nearshore fish stocks and fisheries. Regulations proposed for consideration and adoption by the Commission also describe options for regional management, describe the basis and criteria for allocation decisions, include three options describing how allocation will be conducted, describe the process of setting Total Allowable Catches (TACs) for nearshore rockfish, add mechanisms for closing the fishery for nearshore rockfish and notifying the public, including fishery participants. Regulations would also be adopted to clarify in regulation provisions of the Fish and Game Code that describe the number of persons needing a nearshore fishery permit when taking and landing nearshore fish from a vessel, specify that nearshore fishery permits are revocable, and that the fee for a nearshore permit is \$125.00. Regulations also are proposed to specify that any nearshore fish must be measured immediately and returned to the water immediately if shorter than the minimum size limit, specify that adoption of size limits, or changes to such limits be based on the best available scientific information and adopted following public notice and at least one public hearing, and that would require the sorting by species prior to weighing of any nearshore fish as defined in Section 1.90, Title 14, CCR. Finally, three regulatory options are being proposed that would amend commercial nearshore fishery gear regulations to: 1) either specify in one regulation areas where the current limit of 150 hooks and 15 hooks per line is in effect along the California coast, **and include an existing exception south of Point Conception, Santa Barbara County, for the use of more than 150 hooks when targeting halibut, white seabass, shark, skates, and rays**, 2) restrict commercial fishing for nearshore fishes to the use of hand-line or rod-and-reel gear with not more than ~~two~~ **five** hooks per line, and lines attached to the boat or person, or 3) would prohibit the take, possession, sale, landing or purchase of nearshore fish stocks from California waters.

More specifically, proposed regulation changes would:

1. add provisions **to Article 3 of Chapter 5.5, Title 14, CCR**, that describe the purpose and scope of the Nearshore FMP, and describe the location in Title 14, CCR, of regulations that deal either with recreational or commercial fishing for nearshore species (proposed Section 52.00, Title 14, CCR),
2. provide definitions for *Allocation, Cape Mendocino, Council/PFMC, Fishery Control Rule, National Marine Fisheries Service, Nearshore Fishery Management Plan, Nearshore Rockfish, Overfished, Overfishing, Quota, Total Allowable Catch or TAC, and Unfished Biomass* (proposed new Section 52.01, Title 14, CCR),
3. direct that management of nearshore rockfish conform to goals, objectives, criteria, procedures and fishery control rule guidelines, describe the process and timing of nearshore fishery management, monitoring, assessment, and adoption of management measures, **including the ability to apply fishery management measures to regional management areas or portions of regional management areas**, and authorize the Director to appoint advisory panels to provide for public input and assistance in the review of fishery assessments, management proposals, and proposed plan amendments (proposed new Section 52.02, Title 14, CCR),
4. describe three options for achieving nearshore fishery management goals and objectives that each include one or more measures involving fishery control rules, allocation, regional management, marine protected areas, nearshore finfish conservation areas, restricted access, prohibitions on take, possession, landing, sale, and purchase of 19 nearshore species of fish from waters off California, and restrictions on commercial fishing gear that may be adopted by the Commission as an option or modified option (proposed new Section 52.03, Title 14, CCR),
5. describe three regional management options to include 1) two regions reflecting the Pacific Fishery Management Council's current rockfish and lingcod management areas, 2) three management regions in northern central, and southern California, and 3) four management regions with a central region divided into a north-central and south-central region (proposed new Section 52.04, Title 14, CCR), **with options for the boundary between the central and southern regional management areas at either Point Conception or Point Arguello, Santa Barbara County.**
6. provide the basis for allocation of nearshore fish stocks, factors that will be considered during changes in allocation, ~~describe the conditions under which an allocation may be determined a routine management measure~~, and proposes options for determining allocation including the need to comply with Federal allocation until transfer of management authority is complete, allocation based on stock size, allocation based on

- economic benefit to the state, and allocation applied regionally using historic and regional information (proposed new Section 52.05, Title 14, CCR),
7. describe how the total allowable catch (TAC) of nearshore rockfish is determined, authorize department closure of the fishery when the TAC is reached, or expected to be reached, and describe how public notice of closures will be conducted (proposed new Section 52.09, Title 14, CCR),
 8. clarify in regulation, and make consistent with current Fish and Game Code law, provisions specifying that the Nearshore Fishery permit is needed to take nearshore fishes, one Nearshore Fishery permittee must be aboard a vessel when fishing, the permit is revocable, and the fee for a permit is \$125.00 (proposed change to Section 150.01, Title 14, CCR),
 9. require that all nearshore fish defined under Section 1.90 be sorted by species prior to weighing and the weight be recorded separately on the landing receipt, and adopt as regulation current Fish and Game Code requirements that nearshore fish with size limits be measured when first brought aboard and released immediately if undersize, and that adoption of regulations setting or modifying minimum or maximum size limits be based on the best available scientific information (proposed changes to Section 150.16, Title 14, CCR), and
 10. provide three options that would either 1) clarify in one regulation the current areas identified in Fish and Game Code sections 9027 and 9027.5 where the restriction on number of hooks and lines that may be used commercially to take nearshore fishes applies off California, **including an existing exception to the 150 hook restriction when targeting halibut, white seabass, sharks, skates, and rays south of Point Conception, Santa Barbara County;** or 2) restrict the commercial take of nearshore fishes to the use of hand-line and rod-and-reel fishing gear, including not more than two lines per person and four lines per boat, not more than **five** hooks per line, and the gear must be attached to the person or vessel, with specified limits on the flexibility and breaking strength of the line and the size of the terminal weight or jig, or 3) prohibit the commercial take, possession, landing, sale, and purchase of nearshore fishes from waters off California.